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VIA ECF

October 17, 2011

Honorable Arlene R. Lindsay
Honorable E. Thomas Boyle
United States Magistrate Judges
Eastern District of New York
Long Island Federal Courthouse
100 Federal Plaza
Central Islip, New York 11722-4451

RE: Allen v. Devine, et al., No. 09 Civ. 0668 (ADS) (ETB)
Excelsior v. Devine, et al., No. 10-CV-1319 (ADS) (ARL)
Our File No.: 5122/196500

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Dear Judges Lindsay and Boyle:

Peckar & Abramson, P.C. is counsel to Christopher Devine, a defendant, counterclaimant and third-party plaintiff in *Allen v. Devine, et al.*, No. 09 Civ. 0668 (ADS)(ETB) ("*Allen*") and a defendant and third-party plaintiff in *Excelsior v. Devine, et al.*, No. 10-CV-1319 (ADS)(ARL) ("*Excelsior*") (together, the "Related Actions"). I write on behalf of Mr. Devine and with permission on behalf of the following parties in the *Excelsior* case: plaintiff Excelsior Capital, LLC and defendants Bruce Buzil, Greenberg Traurig LLP, and Robert Neiman. This letter provides a status report pursuant to Judge Lindsay's Order dated August 31, 2011.

Substitution of the Estate of C. Robert Allen, III

As we noted in our last letter dated August 30, a suggestion of death was filed on behalf of C. Robert Allen, III ("Bob Allen"), plaintiff and counterclaim defendant in *Allen* and third-party defendant in *Excelsior* on March 17, 2011. On June 14, we filed motions on behalf of Mr. Devine to substitute Grace Allen, in her capacity as executrix of Bob Allen's estate, for Bob Allen as a counterclaim defendant in the *Allen* case and as a third-party defendant in the *Excelsior* case. On June 15, Reed Whittemore, a probate attorney, filed motions to substitute Bob

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Allen's estate for Bob Allen as the plaintiff in the *Allen* case and as a third-party defendant in the *Excelsior* case. All of these motions are unopposed and remain pending, however no attorney has filed a notice of appearance in either of the Related Actions for Grace Allen as executrix or otherwise on behalf of the Bob Allen estate.

Discovery

On October 3, Excelsior Capital, plaintiff in the *Excelsior* case, wrote to the Court to request an extension of the deadline for all discovery in that action from December 15, 2011 to February 15, 2011. Defendants did not consent to Excelsior's request. On October 13, Excelsior's request was granted by the Court.

Excelsior and Defendants have completed their document productions and exchanged privilege logs. As we noted in our last letter, Bob Allen had not completed his document production in the Related Actions before his death, and to our understanding, production of these documents will not resume in either action unless and until the substitution motion is granted. Prior to Bob Allen's death, issues had been raised with Bob Allen and his son, Luke Allen, a third-party defendant in the *Allen* action (together, the "Allens") with regards to documents in the possession of their former outside counsel, and the meet-and-confer process had reached an unsuccessful conclusion shortly before Bob Allen's death. Upon substitution of the estate, the *Excelsior* Defendants intend to file a motion to compel production of outside counsel documents within the custody and control of the Allens.

In late September 2011, Defendants noticed and served subpoenas for depositions of Plaintiff and several non-party fact witnesses in the *Excelsior* case. Defendants hope to reschedule these depositions for early November.

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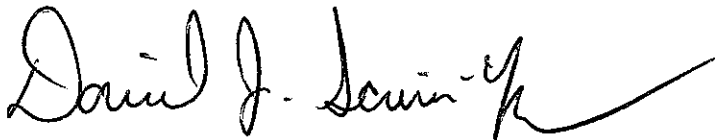
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State Court Action Trial

The jury reached a verdict in favor of Excelsior in the related state court action, *Excelsior Capital, LLC v. Superior Broadcasting Co.*, No. 08289/2007 (Sup. Ct., Nassau County). In that case, Excelsior prosecuted a retrial against Bob Allen's estate as to guarantees executed by Bob Allen on promissory notes provided to Excelsior in 2004.

Additionally, we notify the Court of the following actions that Excelsior has filed against Allen family members, employees, and counsel: *Excelsior v. Superior Broadcasting*, 023475/2010; *Excelsior v. Allen*, 013879/2011; *Excelsior v. Read, Wald, and Cohen & Gresser*, 110950/2011; *Excelsior v. Allen*, 2:11-cv-04663-LDW-ARL; *Excelsior v. Fiorentino*, 111200/2011; *Excelsior v. Allen*, 111199/2011; *Excelsior v. Allen*, 013877/2011; and, *Excelsior v. Allen*, 14425/2011.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David J. Scriven-Young", with a long, sweeping horizontal stroke extending to the right.

David J. Scriven-Young

348928

cc: All counsel of record by ECF